

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KEON WILLIAMS, *et al.*,

Plaintiffs,

v.

NEVADA HIGHWAY PATROL, *et al.*,

Defendants.

Case No. 3:22-CV-00164-MMD-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

Before the Court is Plaintiff Keon Williams, Robert Walker, and Quentin Gibson's (collectively referred to as "Plaintiffs") applications to proceed *in forma pauperis* (ECF Nos. 1, 5, 6, 7), and civil rights complaint (ECF No. 1-1). For the reasons stated below, the Court recommends that Plaintiffs' *in forma pauperis* applications, (ECF Nos. 1, 5, 6, 7), be denied as moot, and the complaint, (ECF No. 1-1), be dismissed without prejudice.

I. IN FORMA PAUPERIS APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

Pursuant to the LSR 1-1: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 applicant's income, assets, expenses, and liabilities."

2 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with
3 some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
4 Cir. 1981) (quotation marks and citation omitted). A litigant need not "be absolutely
5 destitute to enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*,
6 335 U.S. 331, 339 (1948).

7 A review of the applications to proceed IFP reveal Plaintiffs cannot pay the filing
8 fee. (See ECF Nos. 1, 5, 6, 7.) However, because the Court recommends the complaint
9 be dismissed without prejudice, but without leave to amend (in this particular action), the
10 Court recommends the IFP applications be denied as moot.

11 **II. SCREENING STANDARD**

12 Prior to ordering service on any defendant, the Court is required to screen an *in*
13 *forma pauperis* complaint to determine whether dismissal is appropriate under certain
14 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28
15 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint
16 for the enumerated reasons). Such screening is required before a litigation proceeding
17 *in forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507
18 (9th Cir. 2015).

19 "[T]he court shall dismiss the case at any time if the court determines that – (A)
20 the allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or
21 malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks
22 monetary relief against a defendant who is immune from such relief." 28 U.S.C. §
23 1915(e)(2)(A), (B)(i)-(iii).

24 Dismissal of a complaint for failure to state a claim upon which relief may be
25 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §
26 1915(e)(2)(B)(ii) tracks that language. When reviewing the adequacy of a complaint
27 under this statute, the court applies the same standard as is applied under Rule 12(b)(6).
28 See, e.g., *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for

1 determining whether a plaintiff has failed to state a claim upon which relief can be granted
2 under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6)
3 standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling
4 on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir.
5 2000) (citation omitted).

6 The Court must accept as true the allegations, construe the pleadings in the light
7 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v.*
8 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in *pro se* complaints
9 are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes*
10 *v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

11 A complaint must contain more than a “formulaic recitation of the elements of a
12 cause of actions,” it must contain factual allegations sufficient to “raise a right to relief
13 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
14 “The pleading must contain something more. . . than. . . a statement of facts that merely
15 creates a suspicion [of] a legally cognizable right of action.” *Id.* (citation and quotation
16 marks omitted). At a minimum, a plaintiff should include “enough facts to state a claim to
17 relief that is plausible on its face.” *Id.* at 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662,
18 678 (2009).

19 A dismissal should not be without leave to amend unless it is clear from the face
20 of the complaint the action is frivolous and could not be amended to state a federal claim,
21 or the district court lacks subject matter jurisdiction over the action. *See Cato v. United*
22 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th
23 Cir. 1990).

24 **III. SCREENING OF COMPLAINT**

25 In their complaint, Plaintiffs sue Defendants Nevada Highway Patrol (“NHP”)
26 Officer Jesse Cornett, NHP Officer K. Itskin, and Fallon Police Department (collectively
27 referred to as “Defendants”) under 42 U.S.C. § 1983. (See ECF No. 1-1.) The genesis of
28 Plaintiffs’ complaint relates to a traffic stop of Plaintiffs’ car conducted by Defendants on

1 April 2, 2022 in Fallon, Nevada. (*Id.* at 1-7.) Plaintiffs assert they were racially profiled
2 and stopped for traffic violations. (*Id.*) Plaintiffs assert they were forced out of the car and
3 had the car “stolen” by Defendants when it was towed. (*Id.*) Plaintiffs assert six claims
4 and seek damages in the amount to \$20,000,000. (*Id.* at 7.)

5 The Court notes *pro se* litigants have the right to plead and conduct their own
6 cases personally. 28 U.S.C. § 1654. As a rule, *pro se* parties may not pursue claims on
7 behalf of others in a representative capacity. See, e.g., *Simon v. Hartford Life, Inc.*, 546
8 F.3d 661, 665 (9th Cir. 2008) (collecting cases); *Russell v. United States*, 308 F.2d 78,
9 79 (9th Cir. 1962) (“A litigant appearing *in propria persona* has no authority to represent
10 anyone other than himself.”). Only a licensed attorney—an active member of the State
11 Bar of Nevada admitted to practice under the Nevada Supreme Court Rules (“SCR”)—is
12 duly authorized to represent a client in Nevada. *Guerin v. Guerin*, 993 P.2d 1256, 1258
13 (Nev. 2000) (citing NRS 7.285). Although an individual is entitled to represent himself in
14 the district court, no rule or statute permits a non-attorney to represent any other person,
15 a company, a trust, or any other entity in Nevada courts. *Salman v. Newell*, 885 P.2d 607,
16 608 (Nev. 1994) (citing SCR 44). Therefore, an individual “has no right to be represented
17 by an agent other than counsel in a court of law.” *Martinez v. Eighth Jud. Dist. Ct.*, 729
18 P.2d 487, 488 (citing SCR 77; NRS 7.285). Because each Plaintiff is proceeding *pro se*,
19 they cannot maintain an action jointly without representation of counsel. Accordingly, the
20 Court recommends that this action be dismissed without prejudice so that each Plaintiff
21 may individually pursue his own action.

22 **IV. CONCLUSION**

23 For good cause appearing and for the reasons stated above, the Court
24 recommends that Plaintiffs’ *in forma pauperis* applications, (ECF Nos. 1, 5, 6, 7), be
25 denied as moot, and the complaint, (ECF No. 1-1), be dismissed without prejudice.

26 The parties are advised:

27 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
28 Practice, the parties may file specific written objections to this Report and

1 Recommendation within fourteen days of receipt. These objections should be entitled
2 "Objections to Magistrate Judge's Report and Recommendation" and should be
3 accompanied by points and authorities for consideration by the District Court.

4 2. This Report and Recommendation is not an appealable order and any
5 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
6 District Court's judgment.

7 **V. RECOMMENDATION**

8 **IT IS THEREFORE RECOMMENDED** that Plaintiffs' *in forma pauperis*
9 applications, (ECF Nos. 1, 5, 6, 7), be **DENIED AS MOOT**;

10 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint, (ECF No. 1-
11 1); and,

12 **IT IS FURTHER RECOMMENDED** that the complaint, (ECF No. 1-1), be
13 **DISMISSED WITHOUT PREJUDICE**.

14 **DATED:** July 15, 2022.

15 
16 **UNITED STATES MAGISTRATE JUDGE**